

DDR

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 95 OF 2002

Union of India through

General Manager Central Railway

...Petitioner

Vs.

Jagdish Prasad Shrivastava

...Respondent

.....

Mr. Suresh Kumar along with Ms. Mohinee Chougule, Advocate for the petitioner.

Mr. Rahul Walia i/by Mr. G.S. Walia, Advocate for the respondent.

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**CORAM : SMT. V.K. TAHILRAMANI ACTING C.J.
AND M.S.KARNIK, J.**

DATE : 1st FEBRUARY, 2018.

ORDER (PER M.S.KARNIK, J.) :-

Shri Suresh Kumar - learned Counsel for petitioner – Union of India assailing the order passed by the Central Administrative Tribunal, Mumbai, urged that the impugned order challenged before the Tribunal was passed by an authority higher in rank than appointing authority. Relying upon Clause 2

of Article 311 of the Constitution of India, learned Counsel for the petitioner submitted that the Tribunal was in error in arriving at the finding that Railway Board had no authority to issue the impugned order.

2. Learned Counsel for the respondent pointed out that order passed by the petitioner compulsory retiring the respondent has been set aside by the Tribunal. The respondent was reinstated and has now retired. Relying upon the decision of the Apex Court in the case of **Bholanath Mukherjee v. Ramakrishna Mission Vivekananda Centenary College** reported in **(2011) 5 SCC 464**, learned Counsel contends that the issue raised in this petition has become academic.

3. It is not disputed that pursuant to order passed by the Tribunal, respondent was reinstated and has since retired on attaining age of superannuation. It is almost 10 years since the respondent has retired. Learned Counsel Shri Suresh Kumar, however, submitted that the issue raised is of importance and persuaded us to decide the same. We are of the opinion that in

view of the respondent continuing in service consequent to the order passed by the Tribunal and having reached the age of superannuation, the issue raised in this petition has become academic in the peculiar facts and circumstances of this case. We make it clear that we have not expressed opinion on the correctness of the Tribunal's judgment as we have dismissed this petition only on the ground that the respondent has retired from service and it would not be in the interest of anybody to go into the merits of the issue raised by the petitioner.

4. The Writ Petition is accordingly dismissed.
5. Rule is discharged with no order as to costs.

(M.S.KARNIK, J.)

(ACTING CHIEF JUSTICE)